

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

ARROWOOD INDEMNITY COMPANY, §
f/k/a ROYAL INSURANCE COMPANY §
OF AMERICA, §

Plaintiffs §

v. §

CAUSE NO. §

4:09-CV-1862

UNITED NATIONAL INSURANCE §
COMPANY, CAPITOL SPECIALTY §
INSURANCE CORPORATION, §
LANDMARK AMERICAN INSURANCE §
COMPANY, EDCOUCH-ELSA I.S.D., §
OLD REPUBLIC LLOYDS OF TEXAS §
OLD REPUBLIC INSURANCE §
COMPANY, LINCOLN GENERAL §
INSURANCE COMPANY, §
SCOTTSDALE INSURANCE COMPANY, §
MT. HAWLEY INSURANCE COMPANY, §
AL CARDENAS MASONRY, INC. §
and AL CARDENAS MASONRY, §
d/b/a ALECO CONSTRUCTION §

Defendants. §

ARROWOOD'S ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW Arrowwood Indemnity Company f/k/a Royal Insurance Company of America (hereinafter "Arrowwood") and respectfully shows as follows:

Parties

1. Plaintiff Arrowwood is a Delaware insurance company with its principal place of business in Charlotte, North Carolina.
2. Defendant United National Insurance Company is a Pennsylvania insurance company with its principal place of business in Bala Cynwyd, Pennsylvania. It may be served

with process by serving Commissioner Mike Geeslin, Texas Department of Insurance, 333 Guadalupe, Austin, Texas 78701.

3. Defendant Capitol Specialty Insurance Corporation is a Wisconsin insurance company with its principal place of business in Madison, Wisconsin. It may be served with process by serving Commissioner Mike Geeslin, Texas Department of Insurance, 333 Guadalupe, Austin, Texas 78701.

4. Defendant Landmark American Insurance Company is an Oklahoma insurance company with its principal place of business in Atlanta, Georgia. It may be served with process by serving Commissioner Mike Geeslin, Texas Department of Insurance, 333 Guadalupe, Austin, Texas 78701.

5. Defendant Edcouch-Elsa I.S.D. is a Texas public facility corporation. For diversity purposes, it is a citizen of Texas. It may be served with process by serving its registered agent, Mary Alice Reyes, 920 Santa Rosa, Edcouch, Texas 78538.

6. Defendant Old Republic Lloyds of Texas is a Texas domestic insurance company, with its principal place of business in Chicago, Illinois. It may be served with process through its registered agent for service, Glenn Cameron, at 222 West Las Colinas Boulevard, Suite 1720, Irving, Texas 75063.

7. Defendant Old Republic Insurance Company is a Pennsylvania insurance company with its principal place of business in Greenburg, Pennsylvania. It may be served by and through its registered agent for service, Corporation Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

8. Lincoln General Insurance Company is a Pennsylvania insurance company with its principal place of business in York, Pennsylvania. It may be served by and through its

registered agent for service, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

9. Scottsdale Insurance Company is an Ohio insurance company with its principal place of business in Scottsdale, Arizona. It may be served by and through its registered agent for service, Director of Insurance, 2910 North 44th Street, 2nd Floor, Phoenix, Arizona 85018.

10. Mt. Hawley Insurance Company is an Illinois insurance company with its principal place of business in Peoria, Illinois. It may be served by and through its registered agent for service, Kevin McDonough, c/o Safe Fleet Insurance Services, Inc., 801 South Figueroa Street, Suite 200, Los Angeles, California 90017.

11. Defendant Al Cardenas Masonry, Inc. is a now defunct Texas corporation that formerly had its principal place of business in Pharr, Texas. It may be served by and through its registered agent for service, Al Cardenas, at 1204 West Bowie, Pharr, Texas 78577.

12. Defendant Al Cardenas Masonry d/b/a Aleco Construction is a current or defunct Texas corporation or partnership whose partners are all citizens of Texas, and having its principal place of business in Texas.

Jurisdiction and Venue

13. The Court has jurisdiction pursuant to 28 U.S.C. §1332, because there is complete diversity of citizenship between Arrowood and each of the defendants and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to this claim occurred in this judicial district.

14. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201 et seq. for the purpose of determining an actual and justiciable controversy between the parties, as hereinafter more fully appears.

Factual Background

15. Al Cardenas Masonry, Inc. and Al Cardenas Masonry d/b/a Aleco Construction (collectively “ACM”) is a defendant in an underlying lawsuit or lawsuits styled *Edcouch-Elsa I.S.D. v. Aleco Construction Company, et al.*, Cause No. C-633-05-J-2/C-633-05-E in the 430th/275th Judicial District Court of Hidalgo County, Texas (the “underlying lawsuit”). The underlying lawsuit is a design/construction defect lawsuit in which Edcouch-Elsa I.S.D. as plaintiff asserts various claims against ACM and others for alleged defects in the following five school building projects: Santiago Garcia Elementary, John F. Kennedy Elementary, Gutierrez Early Childhood Facility, Ruben Rodriguez Elementary and Ybarra (Sixth Grade) Middle School.

16. Edcouch-Elsa I.S.D.’s claims against ACM with regard to the Ybarra (Sixth Grade) Middle School have already been tried, and the trial has resulted in a verdict. However, judgment has not yet been entered on the verdict. The court in the underlying lawsuit has indicated that Edcouch-Elsa I.S.D.’s claims with regard to the other four school building projects will be tried simultaneously to one jury at a future date.

17. Arrowood issued an excess liability insurance policy to ACM effective from September 23, 2002 to September 23, 2003 (the “Arrowood policy”). The Arrowood policy has \$5 million limits of liability per occurrence and in the aggregate, and applies in excess of an underlying liability insurance policy issued by defendant Lincoln General.

18. The defendants in this case other than ACM and Edcouch-Elsa I.S.D. issued primary or excess liability insurance policies to ACM for varying time periods and in varying limits of liability from 1997 through 2005. Arrowood believes that one or more of the insurer defendants is obligated to indemnify or to pay on behalf of ACM in connection with any judgment or judgments that may be entered in the underlying lawsuit.

Request for Relief

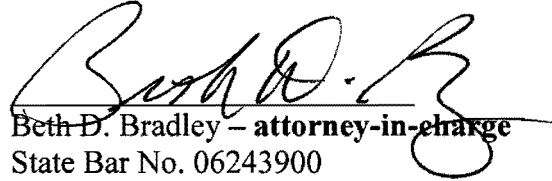
19. Arrowood possesses various defenses to liability for any judgment or judgments that may be entered against ACM and in favor of Edcouch-Elsa I.S.D. in the underlying lawsuit. Arrowood prays that the Court declare that Arrowood is under no duty to indemnify or to pay on behalf of ACM in connection with any judgment or judgments that may be entered in the underlying lawsuit.

20. Alternatively, Arrowood prays that the Court construe the Arrowood policy and the policies issued to ACM by the insurer defendants in this lawsuit and declare the rights and responsibilities, if any, of all of the insurer parties to this lawsuit with respect to any judgment or judgments entered against ACM in the underlying lawsuit.

21. Arrowood also prays for general relief.

WHEREFORE, PREMISES CONSIDERED, Arrowood prays for relief as set out above, for its costs, and for such other and further relief, both at law and in equity, as it may show itself justly entitled and for which it shall ever pray.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Beth D. Bradley", is written over a horizontal line.

Beth D. Bradley – ~~attorney-in-charge~~

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